

the character of parties in this respect is seldom relevant or in issue (*ante*, § 64), partly because it is usually not profitable by such evidence to discredit skilled witnesses, and partly because of the reluctance of professional men to bear such testimony.

(7) Character as to *negligence* or *care* is provable when it is in issue (*ante*, §§ 80, 208); and is also usable evidentially, under certain conditions, to show the doing or not doing of a specific act (*ante*, § 65). The character thus relevant has always been regarded as properly provable by reputation.⁴ From such a hearsay use of reputation, distinguish its use circumstantially to show *notice*, for example, by an employer, of the employee's character (*ante*, §§ 246-260).

(8) That an *animal's* character, as properly as that of a human being, may be the subject of a trustworthy reputation, for reasons similar to those already noted (*ante*, § 1610), would seem a just conclusion.⁵

E. SUNDRY FACTS.

§ 1623. **Reputation to prove Solvency or Wealth.** When the fact to be proved is the condition of a merchant's pecuniary resources as to *solvency*—that is, the ability practically to pay at maturity an ordinary debt—, considerations analogous to those already noted (*ante*, §§ 1586 and 1610) as making reputation a necessary and a trustworthy source of evidence seem to be here fulfilled. The argument has been well expounded in the following passages:

1845, *Goldthwaite, J.*, in *Lawson v. Orear*, 7 Ala. 786: "Insolvency is rather the conclusion which the law deduces from other facts, than the fact itself, and therefore it is quite probable that a witness would not be permitted to state this conclusion independent of the facts from which it was to be inferred. But in most cases, where the question of insolvency is collaterally involved [here the question was whether a purchase was made with notice of insolvency], it is nothing more than the attempt to show that the particular individual is not in a condition to be trusted as a debtor. In all such cases the common question which suggests itself to every mind is, Why is he not to be so trusted? or, What is his condition as to property or credit or the want of either? . . . From the very nature of things it is scarcely possible that there can be any certain means of acquiring exact information upon such a subject. . . . In all, or in a very large majority of all

defendant's reputation as to skill as a surgeon, excluded; no authorities cited); 1897, *People v. Holmes*, 111 Mich. 364, 69 N. W. 501 (reputation not admissible to show an expert's competence). Compare the cases cited *ante*, §§ 64, 67, 199, 208.

⁴ See the citations in the sections above mentioned, where this is assumed. The only excluding decision seems to be *Baldwin v. R. Co.*, 1855, 4 Gray 333 (character as a careless driver).

⁵ The rulings differ: 1901, *Jones v. Packet Co.*, — Miss. —, 31 So. 201 (pedigree of a jack, allowed to be proved by reputation); 1865, *Whittier v. Franklin*, 46 N. H. 23, 27 ("the character of a person for truth, it may well be presumed, cannot be bad without being known to the public; but it may be otherwise in respect

to the vicious propensities of the horse"); 1852, *Heath v. West*, 26 Id. 191, 199 (to the value of a horse, excluded); 1872, *McMillan v. Davis*, 66 N. C. 539 (Roade, J., admitting reputation of foal-getting qualities, value being in issue: "We suppose that with all stock-raisers there are two principal inquiries in selecting a sire: What is his pedigree?, and, Is he a sure foal-getter? Other qualities are judged of by inspection; these cannot be. How are these inquiries to be answered? The most usual and satisfactory, if not the only way, is by reputation").

For the use of a *registry of pedigree* of an animal, see *post*, § 1706. For the admissibility of the animal's character itself, see *ante*, §§ 65, 301.